

Daniel S. Mount, Esq. (Cal. Bar No. 77517)
 Kathryn G. Spelman, Esq. (Cal. Bar No. 154512)
 Daniel H. Fingerman, Esq. (Cal. Bar No. 229683)
 Kevin M. Pasquinelli, Esq. (Cal. Bar No. 246985)
 Mount & Stoelker, P.C.
 RiverPark Tower, Suite 1650
 333 West San Carlos Street
 San Jose CA 95110-2740
 Phone: (408) 279-7000
 Fax: (408) 998-1473
 Email: dmount@mount.com
 kspelman@mount.com
 dfingerman@mount.com
 kpasquinelli@mount.com

Attorneys for Defendants Romi Mayder, Wesley Mayder,
 Silicon Test Systems Inc., and Silicon Test Solutions LLC

United States District Court
 Northern District of California, San Jose Division

VERIGY U.S. INC., a Delaware corporation

Plaintiff,

vs.

ROMI OMAR MAYDER, an individual;
 WESLEY MAYDER, an individual;
 SILICON TEST SYSTEMS INC., a
 California corporation; SILICON TEST
 SOLUTIONS LLC, a California limited
 liability corporation,

Defendants.

Case No. 5:07-cv-04330 (RMW) (HRL)

**Defendants' Motion For Administrative Relief re
 New Matter in Verigy's Reply in Support of
 Verigy's *Ex Parte* Letter-Motion to Strike
 Exhibit C**

Judge: Hon. Howard R. Lloyd

MOUNT & STOELKER, P.C.
 RIVERPARK TOWER, SUITE 1650
 333 WEST SAN CARLOS STREET
 SAN JOSE, CALIFORNIA 95110-2740
 TELEPHONE (408) 279-7000

Verigy continues to flout this court's rules. First, it sought a court order by *ex parte* letter, instead of by motion. Now, Verigy asserts new issues, evidence, and arguments in its reply brief. Since the defendants have no opportunity to respond to this new matter, they request that the court ignore it.¹

The defendants ask the court to ignore the following new matter that was not raised in Verigy's *ex parte* letter-motion. First, Verigy introduced for the first time an argument that Exhibit C should be stricken under Federal Rule of Evidence 403, where all earlier arguments addressed only Rule 408.² Second, Verigy filed an evidentiary declaration from its counsel, John Fowler, that introduces new facts, never before disclosed. Third, a significant portion of Verigy's reply brief discusses the new matter in Mr. Fowler's declaration.³

In the alternative, if the court wants to consider Verigy's submission, despite its impropriety under the rules, the defendants request leave to file a sur-reply. A sur-reply is necessary and appropriate in this case, since the defendants would otherwise have no opportunity to address the new matter introduced by Verigy. The defendants' proposed sur-reply is submitted with this Motion, as Exhibit 1.

Dated: November 16, 2007

Mount & Stoelker, P.C.
Daniel H. Fingerman

/s/

Attorneys for Defendants Romi Mayder, Wesley Mayder,
Silicon Test Systems Inc., and Silicon Test Solutions LLC

Z:\CLIENTS\S CLIENTS\Sites001\Attorney_Notes\Working Pleadings\Admin motion for leave to file sur-reply.doc

¹ See e.g., *Gambra v. International Lease Finance Corp.*, 377 F. Supp. 2d 810, 828 note 18 (C.D. Cal. 2005) (recognizing that it is appropriate to strike new matter from a reply brief, where a prejudiced party demonstrates that it contains new matter)

² Section 4 of Verigy's reply brief

³ Section 1 of Verigy's reply brief